

This partial version of 312 IAC 10 includes all definitions and utility line crossing rules. Utility Line exemption rules are highlighted. The full version of 312 IAC 10 can be obtained at - <http://www.in.gov/legislative/iac/title312.html> (Click on ARTICLE 10. FLOOD PLAIN MANAGEMENT)

ARTICLE 10. FLOOD PLAIN MANAGEMENT

Rule 1. Application

312 IAC 10-1-1 Purpose

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28

Sec. 1. This rule is prepared in response to the authorities and directives in IC 14-28-1, P.L.35-1993 (portions of which were subsequently codified at IC 14-28-2), and IC 14-28-3. (*Natural Resources Commission; 312 IAC 10-1-1; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3384, eff Jan 1, 2002*)

312 IAC 10-1-2 Scope

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 2. (a) This article establishes minimum standards for the delineation and regulation of flood plains to decrease existing flood damages, mitigate future flood damages, and promote the health, safety, and welfare of the people of Indiana.

(b) The article is written with an understanding of the legislative declaration that the loss of lives and property caused by floods and the damage resulting from floods is a matter of deep concern to Indiana affecting the life, health, and convenience of the people and the protection of property. Floodways should not be inhabited and should be kept free and clear of interference or obstructions that will cause any undue restriction of the capacity of the floodways. The water resources of Indiana that have been diminished should be accumulated, preserved, and protected to prevent any loss or waste beyond reasonable and necessary use.

(c) Except as provided in subsection (b), the flood plains subject to regulation are those along waterways having a drainage area of at least one (1) square mile.

(d) The exemption in subsection (b) does not apply to an activity that is subject to IC 14-27-7.

(e) A local ordinance incorporating flood plain management provisions adopted after July 1, 1974, and before January 1, 2000, must be no less effective than 310 IAC 6-1, before its repeal, and must be approved by the division before its effective date.

(f) A local ordinance incorporating flood plain management provisions adopted after December 31, 2001, must be no less effective than this article and must be approved by the division before its effective date. (*Natural Resources Commission; 312 IAC 10-1-2; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3384, eff Jan 1, 2002*)

312 IAC 10-1-3 Rules supplemental to flood control law; local licenses

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3; IC 14-29-1

Sec. 3. This article assists with the implementation of IC 14-28-1, IC 14-28-3, and IC 14-29-1. Except as exempted in this article, a county or municipality must not authorize a structure, obstruction, deposit, or excavation within a floodway without the applicant first receiving a license from the department under IC 14-28-1. (*Natural Resources Commission; 312 IAC 10-1-3; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3384, eff Jan 1, 2002*)

Rule 2. Definitions

312 IAC 10-2-1 Definitions applicable to the regulation of floodways and flood plains

Authority: IC 14-10-2-4

Affected: IC 14-8; IC 14-28-1; IC 14-28-3

Sec. 1. The definitions in this rule apply throughout this article and are in addition to those set forth in IC 14-8, IC 14-28-1,

and 312 IAC 1. (*Natural Resources Commission; 312 IAC 10-2-1; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3384, eff Jan 1, 2002*)

312 IAC 10-2-2 “Abode” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 2. “Abode” means a structure that is used or may be used primarily as a living quarters or residence and includes any of the following:

- (1) House.
- (2) Manufactured home.
- (3) Hotel or motel.
- (4) Hospital, nursing home, or dormitory.
- (5) Similar structure which provides permanent or temporary overnight lodging.

(*Natural Resources Commission; 312 IAC 10-2-2; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3384, eff Jan 1, 2002*)

312 IAC 10-2-3 “Adversely affect the efficiency of, or unduly restrict the capacity of, the floodway” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1-29; IC 14-28-3

Sec. 3. “Adversely affect the efficiency of, or unduly restrict the capacity of, the floodway” means an increase in the elevation of the regulatory flood of at least fifteen-hundredths (0.15) of a foot as determined by comparing the regulatory flood elevation under the project condition to that under the base condition. This definition does not, however, apply to any of the following:

- (1) A dam regulated under IC 14-27-7 and IC 14-28-1.
- (2) A flood control project authorized under IC 14-28-1-29.
- (3) An area for which a flood easement is secured and recorded with the county recorder.

(*Natural Resources Commission; 312 IAC 10-2-3; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002*)

312 IAC 10-2-4 “Bank” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 4. “Bank” means the ground that borders or slopes upward from the bed of a waterway and that confines water to the channel during the normal course or flow. (*Natural Resources Commission; 312 IAC 10-2-4; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002*)

312 IAC 10-2-5 “Base condition” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 5. “Base condition” means the condition of the flood plain on January 1, 1973, but without any unauthorized dam or levee. If an activity after December 31, 1972, lowered the regulatory flood profile, the flood plain under the lower profile is the base condition. (*Natural Resources Commission; 312 IAC 10-2-5; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002*)

312 IAC 10-2-6 “Bed” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 6. “Bed” means the surface rock or soil underlying a waterway. (*Natural Resources Commission; 312 IAC 10-2-6; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002*)

312 IAC 10-2-7 “Best management practices” defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-28-1; IC 14-28-3

Sec. 7. "Best management practices" means those practices best suited to specific site conditions that will control soil erosion and the nonpoint source pollution associated with sediment run-off. The Indiana Handbook for Erosion Control in Developing Areas (October 1992) may be used as a reference in developing an erosion and sediment control plan that is consistent with best management practices. (*Natural Resources Commission; 312 IAC 10-2-7; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002*)

312 IAC 10-2-8 "Bridge" defined

Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-28-1; IC 14-28-3

Sec. 8. "Bridge" means a structure placed over a waterway or other topographically depressed area that is designed to carry pedestrian, vehicular, or other traffic. The term includes a culvert or a ford. (*Natural Resources Commission; 312 IAC 10-2-8; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002*)

312 IAC 10-2-9 "Building" defined

Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-28-1; IC 14-28-3

Sec. 9. "Building" means each of the following:

- (1) A walled and roofed permanent structure.
- (2) A gas or liquid storage tank that is principally aboveground.
- (3) An abode.

(*Natural Resources Commission; 312 IAC 10-2-9; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002*)

312 IAC 10-2-10 "Channel" defined

Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-28-1; IC 14-28-3

Sec. 10. "Channel" means both the natural and the artificial channel of a waterway. (*Natural Resources Commission; 312 IAC 10-2-10; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002*)

312 IAC 10-2-11 "Closure mechanism" defined

Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-28-1; IC 14-28-3

Sec. 11. "Closure mechanism" means a manually or automatically operated device designed and placed to prevent reverse flow through the outfall project during a regulatory flood. (*Natural Resources Commission; 312 IAC 10-2-11; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002*)

312 IAC 10-2-12 "Closure system" defined

Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 12. "Closure system" means a device installed to prevent flow through a utility line in the event of a failure. (*Natural Resources Commission; 312 IAC 10-2-12; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002*)

312 IAC 10-2-13 "Commission floodway" defined

Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-27-7; IC 14-28-1-28; IC 14-28-3

Sec. 13. "Commission floodway" means a floodway designated and established under IC 14-28-1-28 and 312 IAC 10-3-4. (*Natural Resources Commission; 312 IAC 10-2-13; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3385, eff Jan 1, 2002*)

312 IAC 10-2-14 "Conservancy district act" defined

Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3; IC 14-33

Sec. 14. "Conservancy district act" refers to IC 14-33. (*Natural Resources Commission; 312 IAC 10-2-14; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002*)

312 IAC 10-2-15 "Consolidated material" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 15. "Consolidated material" means firm and coherent rock. (*Natural Resources Commission; 312 IAC 10-2-15; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002*)

312 IAC 10-2-16 "County drainage code" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3; IC 36-9-27

Sec. 16. "County drainage code" refers to IC 36-9-27. (*Natural Resources Commission; 312 IAC 10-2-16; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002*)

312 IAC 10-2-17 "Culvert" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 17. "Culvert" means a closed conduit for the passage of run-off through an embankment. (*Natural Resources Commission; 312 IAC 10-2-17; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002*)

312 IAC 10-2-18 "Cumulative effects" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 18. "Cumulative effects" means the impact that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what person undertakes the other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time. Each of the following elements is considered when assessing the impact of cumulative effects within a floodway:

(1) Adverse effects on the efficiency of, or undue restrictions to the capacity of, the floodway.

(2) Unreasonable hazards to the safety of life or property.

(3) Unreasonable detrimental effects upon fish, wildlife, or botanical resources.

(*Natural Resources Commission; 312 IAC 10-2-18; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002*)

312 IAC 10-2-19 "Division" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 19. "Division" means the division of water of the department. (*Natural Resources Commission; 312 IAC 10-2-19; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002*)

312 IAC 10-2-20 "Drainage area" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 20. "Drainage area" means the total land area measured in a horizontal plane and enclosed by a topographic divide from which surface run-off from precipitation normally drains by gravity into a waterway above a specified location. The term includes an area that is ineffective due to karst topography, subsurface drains, or diversions. (*Natural Resources Commission; 312 IAC 10-2-20; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002*)

312 IAC 10-2-21 "Effective waterway area" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 21. "Effective waterway area" means the unobstructed flow area (measured perpendicularly to flow) below the regulatory flood elevation. (*Natural Resources Commission; 312 IAC 10-2-21; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002*)

312 IAC 10-2-22 "Flood control project" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1-29; IC 14-28-3

Sec. 22. "Flood control project" means a project approved or required to be approved under IC 14-28-1-29. (*Natural Resources Commission; 312 IAC 10-2-22; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002*)

312 IAC 10-2-23 "Flood protection grade" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 23. "Flood protection grade" means the elevation two (2) feet above the regulatory flood measured according to:

(1) the elevation of the lowest floor of the building; or

(2) dry flood-proofing of a building other than an abode.

(*Natural Resources Commission; 312 IAC 10-2-23; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002*)

312 IAC 10-2-24 "Fringe" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 24. "Fringe" means the portions of a flood plain lying outside the floodway. (*Natural Resources Commission; 312 IAC 10-2-24; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3386, eff Jan 1, 2002*)

312 IAC 10-2-25 "Local ordinance" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 25. "Local ordinance" means an ordinance that divides the area within the jurisdiction of a county or municipality into zones or districts to regulate, within the zones or districts, any of the following:

(1) The location, height, bulk, number of stories, and size of buildings or other structures.

(2) The percentage of lot occupancy.

(3) The requirement of open spaces.

(4) The density and distribution of populations.

(5) The uses of land and structures.

(*Natural Resources Commission; 312 IAC 10-2-25; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002*)

312 IAC 10-2-26 "Logjam" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 26. "Logjam" means an accumulation of lodged trees, root wads, or other debris that impedes the ordinary flow of water through a waterway. The term does not include the development of sandbars, sedimentation, or accumulations of stone or gravel. Logjams are evidenced by a blockage that does any of the following:

(1) Traverses the waterway.

(2) Causes upstream ponding.

(3) Results in significant bank erosion.

(*Natural Resources Commission; 312 IAC 10-2-26; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002*)

312 IAC 10-2-27 "Low structure" defined

Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 27. “Low structure” means either the lowest point of a bridge superstructure or the apex of an arch or pipe. *(Natural Resources Commission; 312 IAC 10-2-27; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)*

312 IAC 10-2-28 “Lowest floor” defined
Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 28. “Lowest floor” means the lowest elevation described among the following:

- (1) The lowest floor of a building.
- (2) The basement floor.
- (3) The garage floor, if the garage is connected to the building.
- (4) The first floor of a building elevated on pilings or constructed on a crawl space.
- (5) The floor level of an enclosure below an elevated building where the walls of the enclosure provide some resistance to the flow of flood water, unless both of the following requirements are satisfied:
 - (A) The walls are designed to automatically equalize hydrostatic flood forces by allowing for the entry and exit of flood water.
 - (B) At least two (2) openings are designed and maintained for the entry and exit of flood water, and these openings provide a total of at least one (1) square inch for every square foot of enclosed floor area subject to flooding. The bottom of an opening can be no more than one (1) foot above grade. Doorways and windows do not qualify as openings under this clause.

(Natural Resources Commission; 312 IAC 10-2-28; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)

312 IAC 10-2-29 “Manufactured home” defined
Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 29. “Manufactured home” means a structure, transportable in one (1) or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached to required utilities. The term is generally synonymous with mobile home but does not include a recreational vehicle. *(Natural Resources Commission; 312 IAC 10-2-29; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)*

312 IAC 10-2-30 “Outfall project” defined
Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-28-1; IC 14-28-3

Sec. 30. “Outfall project” a project for an outfall structure or an outfall swale. *(Natural Resources Commission; 312 IAC 10-2-30; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)*

312 IAC 10-2-31 “Outfall structure” defined
Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-28-1; IC 14-28-3

Sec. 31. “Outfall structure” means a closed conduit facility used for the transport and discharge of surface run-off or treated effluent to a waterway or swale. The facility includes all appurtenant channels, supply lines, energy dissipation, and erosion control systems. The term does not include a system where the delivery conduit is placed beneath the bed. *(Natural Resources Commission; 312 IAC 10-2-31; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002)*

312 IAC 10-2-32 “Outfall swale” defined
Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-28-1; IC 14-28-3

Sec. 32. “Outfall swale” means an excavated depression in the surficial topography used for the transport and discharge of

surface run-off or treated effluent to a waterway. The depression includes all appurtenant channels, swales, and energy dissipation or erosion control systems. (*Natural Resources Commission; 312 IAC 10-2-32; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3387, eff Jan 1, 2002*)

312 IAC 10-2-33 "Project condition" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 33. "Project condition" means the condition of a flood plain with existing structures, obstructions, deposits, excavations, and the project anticipated by the requested license. (*Natural Resources Commission; 312 IAC 10-2-33; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002*)

312 IAC 10-2-34 "Recreational vehicle" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 34. "Recreational vehicle" means a vehicle that is:

- (1) built on a chassis;
- (2) no more than four hundred (400) square feet measured at the largest horizontal projections;
- (3) designed to be self-propelled or permanently towed by a light duty truck; and
- (4) designed primarily as temporary living quarters for recreational, camping, travel, or seasonal use rather than as a permanent dwelling.

(*Natural Resources Commission; 312 IAC 10-2-34; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002*)

312 IAC 10-2-35 "Regulatory flood" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 35. "Regulatory flood" means a flood having a one percent (1%) probability of being equaled or exceeded in a year as calculated by a method and procedure that is approved by the commission. The regulatory flood is equivalent to the base flood or the 100-year frequency flood. (*Natural Resources Commission; 312 IAC 10-2-35; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002*)

312 IAC 10-2-36 "Rural area for a construction or reconstruction project on a state or county highway bridge that crosses a stream having an upstream drainage area of fifty (50) square miles or less" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3; IC 36-7-4-205

Sec. 36. "Rural area for a construction or reconstruction project on a state or county highway bridge that crosses a stream having an upstream drainage area of fifty (50) square miles or less" means an area where:

- (1) the flood protection grade of each residential, commercial, or industrial building impacted by the project is higher than the regulatory flood elevation under the project condition; and
- (2) the area lies outside:
 - (A) the corporate boundaries of a consolidated city or an incorporated city or town; and
 - (B) the territorial authority for comprehensive planning established under IC 36-7-4-205(b).

(*Natural Resources Commission; 312 IAC 10-2-36; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002*)

312 IAC 10-2-37 "Superstructure" defined

Authority: IC 14-28-1-5; IC 14-28-3-2

Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 37. "Superstructure" means the structural portion of a bridge on which the travelway is constructed, including all elements resting on an abutment or a pier. (*Natural Resources Commission; 312 IAC 10-2-37; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002*)

312 IAC 10-2-38 "Unconsolidated material" defined

Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 38. “Unconsolidated material” means a sediment that is loosely arranged or stratified or whose particles are not cemented together. (*Natural Resources Commission; 312 IAC 10-2-38; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002*)

312 IAC 10-2-39 “Unreasonable detrimental effects upon fish, wildlife, or botanical resources” defined

Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 39. “Unreasonable detrimental effects upon fish, wildlife, or botanical resources” means damage to fish, wildlife, or botanical resources that is found likely to occur by the director based upon the opinion of a professional qualified to assess the damage and:

- (1) creates a condition where recovery of the affected resources is not likely to occur within an acceptable period; and
- (2) cannot be mitigated through the implementation of a mitigation plan approved by the director.

(*Natural Resources Commission; 312 IAC 10-2-39; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002*)

312 IAC 10-2-40 “Unreasonable hazard to the safety of life or property” defined

Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 40. “Unreasonable hazard to the safety of life or property” means a condition that is likely to:

- (1) be caused by the design or construction of a project; and
- (2) result during a regulatory flood in either:
 - (A) the loss of human life; or
 - (B) damage to public or private property to which the license applicant has neither ownership nor a flood easement.

(*Natural Resources Commission; 312 IAC 10-2-40; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3388, eff Jan 1, 2002*)

312 IAC 10-2-41 “Utility line” defined

Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 41. “Utility line” means the following:

- (1) A pipe or pipeline for the transportation of a gaseous, liquid, liquefiable, or slurry substance.
- (2) A cable line, wire, or fiber for the transmission of electricity, telephone, telegraph, radio, television, or similar energy or media.

(*Natural Resources Commission; 312 IAC 10-2-41; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002*)

312 IAC 10-2-42 “Utility line crossing” defined

Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 42. “Utility line crossing” means the utility crosses the waterway in a straight line at an angle of between forty-five (45) degrees and one hundred thirty-five (135) degrees from the streambank and does not parallel the waterway for more than fifty (50) feet in the floodway before crossing unless the parallel portion of the line is contained within existing road right-of-way. (*Natural Resources Commission; 312 IAC 10-2-42; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002*)

312 IAC 10-2-43 “Utility project area” defined

Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 43. “Utility project area” means the area within a floodway that is affected by the placement of a utility line. (*Natural Resources Commission; 312 IAC 10-2-43; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002*)

312 IAC 10-2-44 “Wetland” defined

Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 44. "Wetland" means a transitional area between a terrestrial and deep water habitat (but not necessarily adjacent to a deep water habitat) where at most times the area is either covered by shallow water or the water table is at or near the surface and under normal circumstances any of the following conditions are met:

- (1) The area predominantly supports hydrophytes, at least periodically, or the substrate is predominantly undrained hydric soil, for example, peat or muck.
- (2) The substrate is not a soil but is instead saturated with water or covered by shallow water some time during the growing season, for example, marl beaches or sand bars.

(Natural Resources Commission; 312 IAC 10-2-44; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002)

312 IAC 10-2-45 "Wetland restoration measure" defined

Authority: IC 14-28-1-5; IC 14-28-3-2
Affected: IC 14-27-7; IC 14-28-1; IC 14-28-3

Sec. 45. "Wetland restoration measure" means a practice or combination of practices to restore a degraded or filled wetland. The conversion of an unaltered wetland to another aquatic use is not included within the definition. (Natural Resources Commission; 312 IAC 10-2-45; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3389, eff Jan 1, 2002)

312 IAC 10-5-2 General licensing for utility line crossings

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-27-7; IC 14-28-1; IC 14-29-1

Sec. 2. Except as provided in sections 3 and 4 of this rule, a license is required under IC 14-28-1, IC 14-29-1, and 312 IAC 10-4 to place a utility line in or on a floodway where:

- (1) the drainage area of a river or stream is at least one (1) square mile at the downstream end of the line's floodway segment; or
- (2) a dam or levee regulated under IC 14-27-7 is affected.

(Natural Resources Commission; 312 IAC 10-5-2; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3394, eff Jan 1, 2002)

312 IAC 10-5-3 Exemptions from licensing requirements for aerial electric, telephone, or cable television lines

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 14-28-1; IC 14-29-6

Sec. 3. The placement of an aerial electric, telephone, or cable television line is exempted from the licensing requirements of IC 14-28-1, IC 14-29-1, and 312 IAC 10-4 if:

- (1) the activity does not disturb the bed of the waterway beneath the line;
- (2) the activity conforms with the minimum clearance requirements of section 4(c)(9) of this rule;
- (3) the support mechanisms are located at least seventy-five (75) feet from the top of the bank; and
- (4) the utility line crossing is not within the floodway of a natural river, scenic river, or recreational river designated under 312 IAC 7-2.

(Natural Resources Commission; 312 IAC 10-5-3; filed Jul 5, 2001, 9:12 a.m.: 24 IR 3394, eff Jan 1, 2002)

312 IAC 10-5-4 Exemption from licensing requirements for qualified utility line crossings

Authority: IC 14-10-2-4; IC 14-28-1-5
Affected: IC 13-11-2-260; IC 14-27-7; IC 14-28-1-29; IC 14-33; IC 36-9-27

Sec. 4. (a) This section establishes an exemption for the placement of a qualified utility line crossing in a floodway.

(b) This section does not authorize the placement of a qualified utility line crossing in the following locations:

- (1) Within a river or stream listed in the Indiana Register at 16 IR 1677 in the Outstanding Rivers List for Indiana.
- (2) Within a salmonid stream designated under 327 IAC 2-1-6(c)(1).
- (3) Below the ordinary high watermark of a navigable waterway listed in the Indiana Register at 20 IR 2920 (1997) of the

Roster of Indiana Waterways Declared Navigable or Nonnavigable, unless the utility line is placed beneath the bed of waterway under subsection (c)(8).

(4) Where the project requires an individual permit from the United States Army Corps of Engineers under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

(c) A person who wishes to place a utility line crossing under this section must conform to the following conditions:

(1) Tree removal and brush clearing shall be contained and minimized within the utility line crossing area. No more than one (1) acre of trees shall be removed within the floodway.

(2) Construction activities within the waterway from April 1 through June 30 shall not exceed a total of two (2) calendar days.

(3) Best management practices shall be used during and after construction to minimize erosion and sedimentation.

(4) Following the completion of construction, disturbed areas shall be reclaimed and revegetated. Disturbed areas shall be mulched with straw, wood fiber, biodegradable erosion blanket, or other suitable material. To prevent erosion until revegetated species are established, loose mulch shall be anchored by crimping, tackifiers, or netting. To the extent practicable, revegetation must restore species native to the site. If revegetation with native species is not practicable, revegetation shall be performed by the planting of a mixture of red clover, orchard grass, timothy, perennial rye grass, or another species that is approved by the department as being suitable to site and climate conditions. In no case shall tall fescue be used to revegetate disturbed areas.

(5) Disturbed areas with slopes of three to one (3:1) or steeper, or areas where run-off is conveyed through a channel or swale, shall be stabilized with erosion control blankets or suitable structural armament.

(6) No pesticide will be used on the banks.

(7) If a utility line transports a substance that may cause "water pollution" as defined in IC 13-11-2-260, the utility line will be equipped with an emergency closure system.

(8) If a utility line is placed beneath the bed of a river or stream, the following conditions are met:

(A) Cover of at least three (3) feet measured perpendicularly to the utility line is provided between the utility line and the banks.

(B) If the placement of a utility line is not subject to regulation under IC 14-28-1-29, IC 14-33, or IC 36-9-27, cover is provided as follows:

(i) At least three (3) feet, measured perpendicularly to the utility line, between the lowest point of the bed and the top of the utility line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials.

(ii) At least one (1) foot, measured perpendicularly to the line, between the lowest point of the bed and the top of the utility line or its encasement, which is higher, if the bed is composed of consolidated materials.

(C) If the placement of the utility line is subject to regulation under IC 14-28-1-29, IC 14-33, or IC 36-9-27, cover is provided as follows:

(i) At least three (3) feet, measured perpendicularly to the utility line, between the design bed and the top of the line or its encasement, whichever is higher, if the bed is composed of unconsolidated materials.

(ii) At least one (1) foot, measured perpendicularly to the line, between the design bed and the top of the line or its encasement, whichever is higher, if the bed is composed of consolidated materials.

(D) Negative buoyancy compensation is provided where the utility line has a nominal diameter of at least eight (8) inches and transports a substance having a specific gravity of less than one (1).

(9) If a utility line is placed above the bed of a river or stream, the following conditions are met:

(A) Except as provided in clauses (B) and (C), minimum clearance is provided from the lowest point of the utility line (determined at the temperature, load, wind, length of span, and type of supports that produce the greatest sag) calculated as the higher of the following:

(i) Twelve and one-half (12½) feet above the ordinary high watermark.

(ii) Three (3) feet above the regulatory flood elevation.

(B) If the river or stream is a navigable waterway that is subject to IC 14-28-1, the utility line that crosses over the waterway must be placed to provide the greater of the following:

(i) The minimum clearance required under clause (A).

(ii) The minimum clearance required for the largest watercraft that is capable of using the waterway. The utility must consult in advance with the department to determine the minimum clearance for watercraft at the crossing.

(C) If a utility line is attached to or contained in the embankment of an existing bridge or culvert, no portion of the utility line or its support mechanism may project below the low structure elevation or otherwise reduce the effective

waterway area.

(10) A utility line placed in a dam or levee regulated under IC 14-27-7 does not qualify for an exemption under this subsection.

(d) A person who elects to act under this section must comply with the general conditions under subsection (c). Failure to comply with these terms and conditions may result in the revocation of the general authorization, a civil penalty, a commission charge, and any other sanction provided by law for the violation of a permit issued under IC 14-28-1, and, if the waterway is navigable, the violation of a license issued under IC 14-29-1. (*Natural Resources Commission; 312 IAC 10-5-4; filed Jul 5, 2001, 9:12 a.m.; 24 IR 3394, eff Jan 1, 2002*)

312 IAC 10-5-5 Nonexempt utility line placement; waivers

Authority: IC 14-10-2-4; IC 14-28-1-5

Affected: IC 14-28-1-29; IC 14-29-1; IC 14-33; IC 25-31-1; IC 36-9-27

Sec. 5. The placement of a utility line that is not exempt under section 4 of this rule requires a license under IC 14-28-1, IC 14-29-1, and 312 IAC 10-4 and is subject to the following:

(1) Except as provided in subdivisions (2) and (3), a license application must be filed with the department to demonstrate the construction activities within the utility project area conform with section 4(c)(1) through 4(c)(9) of this rule.

(A) A technical justification that clearly establishes a need for the waiver.

(B) An economic analysis of the cost required to provide the minimum cover and the savings that would be realized if the minimum cover is waived.

(C) An assessment that establishes that there will not be an unreasonable hazard to the safety of life or property or an unreasonably detrimental effect upon fish, wildlife, or botanical resources if the utility line would fail as a result of the waiver.

(D) If the placement of the line is beneath the bed of a waterway and is subject to regulation as a flood control project, under the conservancy district act, or under the drainage code, documentation the county or municipality that has maintenance authority over the waterway has also waived the cover requirements. This documentation must:

(i) be on the letterhead of the county or municipality;

(ii) contain a copy of the statute or ordinance under which the county or municipality has regulatory authority over the waterway;

(iii) contain a statement that clearly waives the minimum cover requirements; and

(iv) contain a statement that the waiver will not impede future maintenance or reconstruction projects on the waterway.

(3) The department may waive the minimum clearance requirements set forth in section 4(c)(9) of this rule if this subdivision is satisfied. The following information must be provided by the applicant:

(A) A technical justification that establishes the need for the waiver.

(B) An economic analysis of the cost required to provide the minimum clearance and the savings realized if waived.

(C) An assessment that establishes that there will not be an unreasonable hazard to the safety of life or property or an unreasonably detrimental effect upon fish, wildlife, or botanical resources if the utility line fails as a result of the waiver.

(D) Documentation of the regulatory flood elevation that includes either of the following:

(i) A photocopy of the latest flood insurance study profile with the site and low point of the line clearly indicated.

(ii) Computations by a certified professional engineer licensed under IC 25-31-1.

(*Natural Resources Commission; 312 IAC 10-5-5; filed Jul 5, 2001, 9:12 a.m.; 24 IR 3396, eff Jan 1, 2002*)